

## **ATTACHMENT D – FEDERAL STANDARD PROVISIONS**

### **I. Standard Provisions – Permit Compliance**

#### **A. Duty to Comply**

1. The Discharger must comply with all of the conditions of this Order. Any noncompliance constitutes a violation of the CWA and the CWC and is grounds for enforcement action, for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application (40 CFR §122.41(a)).
2. The Discharger shall comply with effluent standards or prohibitions established under CWA §307(a) of the for toxic pollutants and with standards for sewage sludge use or disposal established under CWA §405(d) within the time provided in the regulations that establish these standards or prohibitions, even if this Order has not yet been modified to incorporate the requirement (40 CFR §122.41(a)(1)).

#### **B. Need to Halt or Reduce Activity Not a Defense**

It shall not be a defense for a Discharger in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this Order (40 CFR §122.41(c)).

#### **C. Duty to Mitigate**

The Discharger shall take all reasonable steps to minimize or prevent any discharge in violation of this Order that has a reasonable likelihood of adversely affecting human health or the environment (40 CFR §122.41(d)).

#### **E. Property Rights**

1. This Order does not convey any property rights of any sort or any exclusive privileges (40 CFR §122.41(g)).
2. The issuance of this Order does not authorize any injury to persons or property or invasion of other private rights, or any infringement of state or local law or regulations (40 CFR §122.5(c)).

#### **F. Inspection and Entry**

The Discharger shall allow the Santa Ana Water Board, State Board, USEPA, and/or their authorized representatives (including an authorized contractor acting as their representative), upon the presentation of credentials and other documents, as may be required by law, to (40 CFR §122.41(i) and CWC §13383):

1. Enter upon the Discharger's premises where a regulated facility or activity is located or conducted, or where records are kept under the conditions of this Order (40 CFR §122.41(i)(1));
2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this Order (40 CFR §122.41(i)(2));
3. Inspect and photograph, at reasonable times, any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this Order (40 CFR §122.41(i)(3)); and
4. Sample or monitor, at reasonable times, for the purposes of assuring Order compliance or as otherwise authorized by the CWA or the CWC, any substances or parameters at any location. (40 CFR §122.41(i)(4).)

#### **G. Bypass – Not Applicable**

#### **H. Upset**

Upset means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the Discharger. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation (40 CFR §122.41(n)(1)).

1. Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of Standard Provisions – Permit Compliance I.H.2 below are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review (40 CFR §122.41(n)(2)).
2. Conditions necessary for a demonstration of upset. A Discharger who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs or other relevant evidence that (40 CFR §122.41(n)(3)):
  - a. An upset occurred and that the Discharger can identify the cause(s) of the upset (40 CFR §122.41(n)(3)(i));
  - b. The permitted facility was, at the time, being properly operated (40 CFR §122.41(n)(3)(ii));
  - c. The Discharger submitted notice of the upset as required in Standard Provisions – Reporting V.E.2.b below (24-hour notice) (40 CFR §122.41(n)(3)(iii)); and

- d. The Discharger complied with any remedial measures required under Standard Provisions – Permit Compliance I.C above. (40 CFR §122.41(n)(3)(iv))
3. Burden of proof. In any enforcement proceeding, the Discharger seeking to establish the occurrence of an upset has the burden of proof (40 CFR §122.41(n)(4)).

## **II. Standard Provisions – Permit Action**

### **A. General**

This Order may be modified, revoked and reissued, or terminated for cause. The filing of a request by the Discharger for modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any Order condition. (40 CFR §122.41(f).)

### **B. Duty to Reapply**

If the Discharger wishes to continue an activity regulated by this Order after the expiration date of this Order, the Discharger must apply for and obtain a new permit (40 CFR §122.41(b)).

### **C. Transfers**

This Order is not transferable to any person except after notice to the Santa Ana Water Board. The Santa Ana Water Board may require modification or revocation and reissuance of the Order to change the name of the Discharger and incorporate such other requirements as may be necessary under the CWA and the CWC (40 CFR §§122.41(l)(3) and §122.61).

### **III. Standard Provisions – Monitoring**

- A.** Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity (40 CFR §122.41(j)(1)).
- B.** Monitoring results must be conducted according to test procedures under 40 CFR Part 136 or, in the case of sludge use or disposal, approved under 40 CFR Part 136 unless otherwise specified in 40 CFR Part 503 unless other test procedures have been specified in this Order (40 CFR §§122.41(j)(4) and 122.44(i)(1)(iv)).

### **IV. Standard Provisions – Records**

- A.** The Discharger shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this Order, and records of all data used to complete the application for this Order, for a period of at least three (3) years from the date of the sample, measurement, report or application. This period may be extended by request of the Santa Ana Water Board Executive Officer at any time (40 CFR §122.41(j)(2)).

#### **B. Records of monitoring information shall include:**

1. The date, exact place, and time of sampling or measurements (40 CFR §122.41(j)(3)(i));
2. The individual(s) who performed the sampling or measurements (40 CFR §122.41(j)(3)(ii));
3. The date(s) analyses were performed (40 CFR §122.41(j)(3)(iii));
4. The individual(s) who performed the analyses (40 CFR §122.41(j)(3)(iv));
5. The analytical techniques or methods used (40 CFR §122.41(j)(3)(v)); and
6. The results of such analyses (40 CFR §122.41(j)(3)(vi)).

#### **C. Claims of confidentiality for the following information will be denied (40 CFR §122.7(b)):**

1. The name and address of any permit applicant or Discharger (40 CFR §122.7(b)(1)); and
2. Permit applications and attachments, permits and effluent data. (40 CFR §122.7(b)(2).)

## **V. Standard Provisions – Reporting**

### **A. Duty to Provide Information**

The Discharger shall furnish to the Santa Ana Water Board, State Board, or USEPA within a reasonable time, any information which the Santa Ana Water Board, State Board, or USEPA may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this Order or to determine compliance with this Order. Upon request, the Discharger shall also furnish to the Santa Ana Water Board, State Board, or USEPA copies of records required to be kept by this Order (40 CFR §122.41(h) and CWC §13267).

### **B. Signatory and Certification Requirements**

1. All applications, reports, or information submitted to the Santa Ana Water Board, State Board, and/or USEPA shall be signed and certified in accordance with Standard Provisions – Reporting V.B.2, V.B.3, V.B.4, and V.B.5 below (40 CFR §122.41(k)).
2. All permit applications shall be signed by either a principal executive officer or ranking elected official. For purposes of this provision, a principal executive officer of a federal agency includes: (i) the chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of USEPA) (40 CFR §122.22(a)(3)).
3. All reports required by this Order and other information requested by the Santa Ana Water Board, State Board, or USEPA shall be signed by a person described in Standard Provisions – Reporting V.B.2 above, or by a duly authorized representative of that person. A person is a duly authorized representative only if:
  - a. The authorization is made in writing by a person described in Standard Provisions – Reporting V.B.2 above (40 CFR §122.22(b)(1));
  - b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. A duly authorized representative may thus be either a named individual or any individual occupying a named position. (40 CFR §122.22(b)(2)); and
  - c. The written authorization is submitted to the Santa Ana Water Board and State Board. (40 CFR §122.22(b)(3)).
4. If an authorization under Standard Provisions – Reporting V.B.3 above is no longer accurate because a different individual or position has responsibility for the overall

operation of the facility, a new authorization satisfying the requirements of Standard Provisions – Reporting V.B.3 above must be submitted to the Santa Ana Water Board and State Board prior to or together with any reports, information, or applications, to be signed by an authorized representative (40 CFR §122.22(c)).

5. Any person signing a document under Standard Provisions – Reporting V.B.2 or V.B.3 above shall make the following certification:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.” (40 CFR §122.22(d)).

### **C. Monitoring Reports**

1. Monitoring results shall be reported at the intervals specified in the Monitoring and Reporting Program (Attachment E) in this Order (40 CFR §122.22(l)(4)).
2. Monitoring results must be reported on a Discharge Monitoring Report (DMR) form or forms provided or specified by the Santa Ana Water Board or State Board for reporting results of monitoring of sludge use or disposal practices (40 CFR §122.41(l)(4)(i)).
3. If the Discharger monitors any pollutant more frequently than required by this Order using test procedures approved under 40 CFR Part 136 or, in the case of sludge use or disposal, approved under 40 CFR Part 136 unless otherwise specified in 40 CFR Part 503, or as specified in this Order, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or sludge reporting form specified by the Santa Ana Water Board (40 CFR §122.41(l)(4)(ii)).
4. Calculations for all limitations, which require averaging of measurements, shall utilize an arithmetic mean unless otherwise specified in this Order. (40 CFR §122.41(l)(4)(iii)).

### **D. Compliance Schedules**

Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this Order, shall be submitted no later than 14 days following each schedule date (40 CFR §122.41(l)(5)).

### **E. Twenty-Four Hour Reporting**

1. The Discharger shall report any noncompliance that may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the Discharger becomes aware of the circumstances. A written submission shall also be provided within five (5) days of the time the Discharger becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance (40 CFR §122.41(l)(6)(i)).
2. The following shall be included as information that must be reported within 24 hours under this paragraph (40 CFR §122.41(l)(6)(ii)):
  - a. Any unanticipated bypass that exceeds any effluent limitation in this Order (40 CFR §122.41(l)(6)(ii)(A));
  - b. Any upset that exceeds any effluent limitation in this Order (40 CFR §122.41(l)(6)(ii)(B)).
3. The Santa Ana Water Board may waive the above-required written report under this provision on a case-by-case basis if an oral report has been received within 24 hours (40 CFR §122.41(l)(6)(iii)).

### **F. Planned Changes**

The Discharger shall give notice to the Santa Ana Water Board as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required under this provision only when (40 CFR §122.41(l)(1)):

1. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 40 CFR §122.29(b) (40 CFR §122.41(l)(1)(i)); or
2. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are not subject to effluent limitations in this Order (40 CFR §122.41(l)(1)(ii)).
3. The alteration or addition results in a significant change in the Discharger's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan (40 C.F.R. §122.41(l)(1)(iii)).

**G. Anticipated Noncompliance**

The Discharger shall give advance notice to the Santa Ana Water Board or State Board of any planned changes in the permitted facility or activity that may result in noncompliance with General Order requirements (40 C.F.R. §122.41(l)(2)).

**H. Other Noncompliance**

The Discharger shall report all instances of noncompliance not reported under Standard Provisions – Reporting V.C, V.D, and V.E above at the time monitoring reports are submitted. The reports shall contain the information listed in Standard Provision – Reporting V.E above (40 C.F.R. §122.41(l)(7)).

**I. Other Information**

When the Discharger becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application, or in any report to the Santa Ana Water Board, State Board, or USEPA, the Discharger shall promptly submit such facts or information (40 CFR §122.41(l)(8)).

**VI. Standard Provisions – Enforcement**

- A.** The Santa Ana Water Board is authorized to enforce the terms of this permit under several provisions of the CWC, including, but not limited to, §§13385, 13386, and 13387.